FILED
MAR 2 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1254

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

THURMAN V. WHITFIELD,

Petitioner,

– against –

THE COCA-COLA COMPANY, COLIN A. (TOPPER) CAREW, ALYCE S. CAREW, GOLDEN GROOVE PRODUCTIONS, INC., NORMAN LEAR, ACT III COMMUNICATIONS, INC. and FREDERICK C. TIMM, ESQ.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STEPHEN F. HUFF
Counsel of Record
PRYOR, CASHMAN, SHERMAN & FLYNN
JAMIE M. BRICKELL
On the Brief
Counsel for Respondents
410 Park Avenue
New York, New York 10022
(212) 421-4100

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OPINIONS BELOW

A reproduction of the July 25, 1989 Opinion by the United States District Court for the Eastern District of Pennsylvania dismissing the instant action is set forth in the Appendix to the Petition as "Appendix A". A reproduction of the December 22, 1989 Opinion by the United States Court of Appeals for the Third Circuit affirming the District Court dismissal of this action is set forth in the Appendix to the Petition as "Appendix A-1".

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

Whether Petitioner Thurman V. Whitfield has set forth any basis for review of the Circuit Court Order affirming the District Court decision dismissing this action as "frivolous."

STATUTORY PROVISIONS INVOLVED

The Petition sets forth (at pages v. - vi.) the statutes which Petitioner believes are relevant to the instant Petition. It is Respondents' contention, however, that none of these statutes have any bearing upon the questions before this Honorable Court.

COUNTERSTATEMENT OF THE CASE

Thurman V. Whitfield initially brought suit against Colin A. (Topper) Carew, Norman Lear, and several related entities in the Eastern District of New York in 1981 in connection with a television script which he allegedly submitted and which, he contended, was improperly used in connection with a television series. After Whitfield withdrew or the Court dismissed all but his implied contract claim in that original action and the presiding judge therein granted defendants' motion therein for summary judgment, the Second Circuit Court of Appeals reversed the District Court's finding of "no similarities" because defendants' scripts were not part of the record and remanded the matter to the District Court for a comparison of Mr. Whitfield's submission with the scripts of defendants' television show. Defendants thereupon renewed their motion for summary judgment in 1986, seeking a dismissal of Whitfield's remaining implied contract claim for lack of similarity.

The instant action is the *fourth* action commenced by Petitioner Thurman V. Whitfield during the pendency of that

second summary judgment motion in the original action. Mr. Whitfield commenced two such actions in the Southern District of New York against Respondents Lear, Carew and various related parties relating to the events transpiring in that original lawsuit. The second such action was dismissed *sua sponte* by the Hon. Judge Brieant as duplicative. The first such action was subsequently withdrawn by Whitfield without prejudice.

Mr. Whitfield also commenced two actions in the Eastern District of Pennsylvania relating to the same original claims. The first such action was transferred on motion to the Eastern District of New York for consolidation with the original action pending before the Honorable I. Leo Glasser. Judge Glasser has since granted the motion for summary judgment by the defendants in the original action on Whitfield's remaining claim therein. As such, the first Eastern District of Pennsylvania action transferred to New York, which is based upon the events surrounding the original action, is ripe for a motion to dismiss.[1]

The second Eastern District of Pennsylvania action is the instant case. The Honorable James Giles of the Eastern District of Pennsylvania, in response to a motion by Respondents herein setting forth both the inherent similarities between this action and the various earlier lawsuits brought by Whitfield, and the total absurdity of the claims asserted herein by Whitfield, granted Respondents' motion to dismiss this action as "frivolous". The Third Circuit Court of Appeals, upon review of all prior proceedings both herein and in all of the other aforementioned actions, affirmed that dismissal and awarded costs against Whitfield.

The instant Petition for Certiorari is nothing more than a continuation of Whitfield's ongoing pattern of harassment. Without identifying (or incorporating herein) any aspects of his complaint or the purported statutory basis for seeking relief from this Honorable Court, Whitfield makes wild and unsubstantiated

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[1] Counsel is presently preparing a motion to dismiss that action on behalf of various defendants therein.

accusations against the Respondents herein and the various Court employees and officials that he has encountered through his various litigations. Since there is clearly no merit to Whitfield's reckless allegations and since he has not set forth any basis upon which this Court may even consider his case, Respondents Colin A. (Topper) Carew, Alyce Carew, Norman Lear, Golden Groove[2], Act III Communications, Inc.[3] and The Coca-Cola Company[4] therefore respectfully request that the instant Petition be dismissed.

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[2] Respondent Golden Groove, which is incorrectly referred to by plaintiff as Golden Groove Productions, Inc., has no parent or subsidiary company within the meaning of Supreme Court Rule 29.1.

[3] Respondent Act III Communications, Inc. has no parent or subsidiary company within the meaning of Supreme Court Rule 29.1.

[4] Respondent The Coca-Cola Company sells its soft drink syrup and concentrate in the United States to bottlers in licensed territories, including bottlers which are subsidiaries or divisions of Coca-Cola Enterprises, Inc. Several domestic bottlers are jointly owned by The Coca-Cola Company and independent interests. In addition, The Coca-Cola Company has a significant ownership interest (less than 100% ownership) in each of the following companies: Coca-Cola Enterprises Inc.; T.C.C. Beverages Ltd.; Amatil Limited; Johnston Coca-Cola Bottling Group, Inc.; and, Coca-Cola Bottling Consolidated.

ARGUMENT

I.

PETITIONER HAS NOT SET FORTH ANY BASIS UPON WHICH THIS COURT MAY GRANT HIS PETITION FOR WRIT OF CERTIORARI

As he has done in all prior litigations and in the earlier stages of this litigation, Whitfield utilizes the instant petition to make accusations concerning the conduct of the defendants in his original Eastern District of New York action (Norman Lear, Topper Carew and related entities), the attorneys of record in that original action (including Stephen F. Huff, Pryor, Cashman, Sherman & Flynn, and Carl Person) and various court employees involved in his various litigations (including Robert Heinemann, Clerk of the Eastern District of New York), some of whom are not even parties hereto, in order to create the impression that there is some vast "conspiracy" ongoing for the sole purpose of cheating Petitioner and of depriving him of his day in Court. However, because Whitfield has failed to even set forth a basis upon which his petition should be considered, certiorari should be denied.

The Judge presiding over this action in the United States District Court for the Eastern District of Pennsylvania, the Honorable James Giles, seeing that this action is entirely lacking in merit and is a mere repetition of the various other litigations previously brought by Petitioner Whitfield, granted defendants' (respondents') motion to dismiss this action as "frivolous". The United States Circuit Court of Appeals for the Third Circuit affirmed Judge Giles' decision and awarded defendants (respondents) their costs of defending Whitfield's appeal. The instant Petition for Certiorari should likewise be denied because it too is frivolous.

Aside from the fact that most of the Petition herein makes little or no sense, Whitfield has not even attempted to set forth any reason why this Court should use its discretionary power to review the Third Circuit's holding. The entirety of his "Statement

of the Case" merely purports to set forth some of the historical background of Whitfield's repetitive lawsuits. The section of the Petition entitled "Reasons for Allowing the Writ" devotes seventeen pages (from page 5 through page 22 and page 29) to the alleged problems Whitfield has encountered in his various lawsuits.[5] Even Whitfield's discussions of "RICO", the "Standard of Proof" and "Due Process and Civil Rights" do not set forth the issues this Court must address or the supposed errors by the lower courts which would justify this Court taking any action. Whitfield has merely sprinkled a few irrelevant legal concepts into what he has called a "Petition for a Writ of Certiorari," and has asked this Court to figure out why his application merits consideration. The only conclusion that may be drawn is that the instant Petition is itself frivolous because it totally fails to set forth a basis for review of the Third Circuit's decision.

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[5] Whitfield also appears to take issue with the procedural handling of his case at the Third Circuit. (See pages 15-22.) His discussion of these matters, however, like his other contentions, is unconnected to any issues that can be addressed by this Court.

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that Whitfield's Petition for a Writ of Certiorari be denied.

STEPHEN F. HUFF
Counsel of Record
PRYOR, CASHMAN, SHERMAN & FLYNN
JAMIE M. BRICKELL
On the Brief
Counsel for Respondents
410 Park Avenue
New York, New York 10022
(212) 421-4100